

INTERIM PROJECT AGREEMENT

**Maryland Department of Transportation,
CSX Intermodal Terminals, Inc.
and
CSX Transportation, Inc.
regarding
the Baltimore Rail Intermodal Facility**

The purpose of this Agreement is to further the goals of the Memorandum of Understanding ("MOU") dated May 29, 2009, between CSX Transportation, Inc. ("CSXT") and the Maryland Department of Transportation ("MDOT"), and to establish a mutual understanding among MDOT, CSXT, and CSX Intermodal Terminals, Inc. ("Intermodal", and collectively with MDOT and CSXT, the "Project Parties") regarding the development of the Baltimore Rail Intermodal Facility project ("Project") contemplated at an existing CSXT rail yard in Baltimore City, Maryland ("Site"). The Project involves constructing a new intermodal container transfer facility ("Facility") at the Site that is capable of handling double-stack intermodal trains. CSXT will own the Site and will lease it to Intermodal. Intermodal will own the improvements on the Site and will operate the Facility.

The Project Parties anticipate that the Project will be organized in phases as described in this Agreement. This Agreement sets forth an arrangement by which MDOT will contribute funding towards the Phase 1 planning efforts and Phase 2 activities, including permitting. This Agreement also provides the framework by which the State will provide funding for Phase 3 construction. Finally, this Agreement establishes certain anticipated Phase 4 operating procedures. The funding commitments of the State of Maryland ("State") as described in this Agreement are subject to appropriation by the Maryland General Assembly and approval by the Maryland Board of Public Works. CSXT's and Intermodal's funding and other commitments to the Project are conditioned upon obtaining approval from the CSX Corporation Board of Directors.

Accordingly, the Project Parties hereby agree as follows regarding the development, implementation, and construction of the Project:

PHASE 1 Planning, Engineering and Design Target Timeline: October 2012 – April 2013
<u>Planning and Engineering</u> <ul style="list-style-type: none">▪ Once the Initial Funds (as defined below) have been made available to Intermodal, Intermodal shall begin to plan, design, and engineer the Facility and perform the other Phase I activities.▪ Intermodal shall design the Facility to support a planned capacity of 85,000 lifts per year.▪ Intermodal shall, within six (6) months of MDOT making \$2,500,000 ("Initial Funds") available to Intermodal for all Phase 1 and 2 Activities (defined below), complete approximately fifty percent (50%) design plans ("Plans") sufficient to enable Intermodal to obtain a guaranteed maximum price design/build contract for the construction of the Facility.▪ Intermodal will share the Plans with MDOT. MDOT shall have an opportunity to review and comment on the Plans.▪ Intermodal may revise the Plans, as appropriate, in response to comments from MDOT. Intermodal shall provide MDOT a written response on all comments not integrated into the Plans.

Phase 1 Property Acquisition

The properties described in this section are hereinafter collectively referred to as the "Project Property."

- **Private Land:** CSXT shall have sole responsibility for acquiring real property owned by private third parties for use in connection with the Project ("Private Land"), as and when provided in this Agreement. During Phase 1, CSXT will seek to negotiate option contracts with private landowners. Such option contracts are expected to include (i) rights of entry in favor of CSXT to conduct necessary site investigations on the Private Land, and (ii) the private landowner's agreement to cooperate in obtaining permits and other approvals required for the Project.
- **State Land:** The State currently holds fee simple title to real property at the Site for use in connection with the Project ("State Land"). MDOT will seek any necessary Maryland Board of Public Works approval and facilitate the contribution of the State Land to CSXT at no or nominal cost and in accordance with the construction schedule for the Project through fee simple title, or such other forms, such as by easement or long-term ground lease, acceptable to CSXT. To facilitate environmental and other due diligence investigations and studies of the State Land, the State and CSXT shall enter into a mutually acceptable right of entry and access agreement and binding confidentiality agreement.
- **City Land/NPO Land:** MDOT shall work with Baltimore City ("City") and not-for-profit organizations to facilitate the contribution of their land to CSXT for use in connection with the Project and in accordance with the construction schedule through fee simple title, or such other forms, such as by easement or long-term ground lease, acceptable to CSXT. The land owned by the City is referred to herein as the "City Land," and the land owned by not-for-profit organizations is referred to herein as the "NPO Land."
- **CSXT Land:** CSXT shall contribute land at the Site for use in connection with the Project ("CSXT Land"), as and when provided in this Agreement.

Investigation and Evaluation

- **CSXT Land and Private Land:** CSXT will (i) evaluate the suitability of the CSXT Land and the Private Land for Project use, including, but not limited to, appropriate environmental due diligence, as needed, and (ii) determine the projected cost to remediate any environmental hazards, as necessary, together with costs related to the constructability of the CSXT Land and the Private Land consistent with the intended use of the Site ("Approximate Remediation Cost").
- **State Land:** The State will provide a right of entry to CSXT to evaluate the suitability of the State Land and to conduct all appropriate inquiry into environmental conditions, as needed, on the State Land to determine the Approximate Remediation Cost for the State Land.
- **City Land and NPO Land:** MDOT shall coordinate with the City and the owners of the NPO Land to facilitate CSXT's access to the City Land and NPO Land so as to allow CSXT to evaluate the suitability of the City Land and the NPO Land and to conduct the appropriate environmental investigation to determine (i) the nature and extent of any environmental contamination present on the City Land and the NPO Land, and (ii) the Approximate Remediation Cost for the City Land and NPO Land.

Environmental Remediation

The estimated cost of environmental remediation for all Private Land, State Land and City Land will be determined and included in the Initial Cost Projection (defined below).

CSXT Priority Projects

- Within sixty (60) days of the effective date of this Agreement, CSXT shall identify priority projects in Maryland having an aggregate estimated construction cost in excess of \$15,000,000 that are not related to the Project (the "Other Projects") and provide such list to MDOT. Based on this list, MDOT and CSXT will mutually agree on which Other Projects will be selected for federal funding.
- MDOT shall use its good faith efforts to obtain a federal grant in excess of \$15,000,000 to fund CSXT's obligations for such Other Projects.
- Should MDOT identify or secure federal funds that do not require a formal grant application, but may still be utilized for funding CSXT's commitment and obligations with respect to financing the Other Projects, those funds shall be applied against the overall federal grant that is pursued by MDOT for the Other Projects.
- CSXT will perform the engineering and design necessary for the grant application. MDOT will assemble the application and provide the required public sponsorship.
- MDOT shall make good faith efforts to secure the federal funds for the Other Projects no later than December 31, 2013.
- Should the Project not go forward, but federal grant funds have been obtained and used for the Other Projects, the amount of the federal grant will be credited against the MARC Mutually Beneficial Projects Account for the period 2015-2020.

Status of Clearance Projects

CSXT shall provide written quarterly updates to MDOT summarizing the status of the Clearance Projects (as defined in Phase 3).

Permits and Approvals:

- Intermodal shall endeavor to obtain the legal right and authority to pursue the permits and approvals for the Project for all of the Project Properties. To the extent legally permissible, the State shall give Intermodal the authority to apply for permits and approvals affecting the State Land in Intermodal's name. If not legally permissible, the State shall cooperate with Intermodal in applying for such permits and approvals.
- The State shall recommend that the City give Intermodal the authority, to the extent legally permissible, to apply for permits and approvals affecting the City Land in Intermodal's name.

Use of Initial Funds

- MDOT shall undertake the legislative review process to make the Initial Funds available to Intermodal by October 15, 2012. The Initial Funds will be subject to a mutually agreeable separate grant agreement.
- The Initial Funds shall be available to Intermodal on a reimbursable basis to offset the costs of the following activities related to the Project (collectively, the "Phase 1 and 2 Activities"):
 - Project planning and design;
 - Engineering and surveying;
 - Obtaining permits and other approvals and related activities;
 - Traffic and noise studies; and
 - Environmental studies.
- Intermodal will submit periodic bills, not more often than once per month, and MDOT will pay all bills within thirty (30) days of receipt of the same.
- CSXT and Intermodal shall be responsible for all Phase 1 and Phase 2 costs above and beyond the Initial Funds.

Phase 1 Cost Projection and Termination Right

- All Phase 1 activities shall be completed within six (6) months of the State making the Initial Funds available to Intermodal for all Phase 1 and 2 Activities.
- Intermodal will calculate the projected cost for completion of the Project ("Initial Cost Projection") and deliver the Initial Cost Projection to the State. The Initial Cost Projection will address all actual and anticipated costs and expenses of the Project, including, but not be limited to, costs and expenses for: Project design, engineering and construction costs; completing the Plans; acquiring the Private Land and the NPO Land; environmental testing and estimated remediation costs; and costs associated with obtaining permits and approvals.
- Within thirty (30) days of receipt by the State of the Initial Cost Projection, each of the Project Parties shall have the unilateral right by written notice to the other to terminate this Agreement and cease all further activities related to the Project. Except for the obligations in existence as of the date of such termination, neither party shall incur any liability if it chooses to exercise its termination right.

PHASE 2
Permitting and Other Approvals, Confirmation of Funding
Target Timeline: April 2013 – September 2013

If none of the Project Parties exercises the Phase 1 termination right, the Project Parties will undertake the following activities during Phase 2.

Permitting and Approvals

- Intermodal shall endeavor to obtain all applicable federal, state, and local permits and approvals for the Project.
- MDOT shall assign a project manager to assist in the efforts to obtain the permits and approvals as needed to ensure their timely receipt.
- The Project Parties shall cooperate to obtain the required City approvals for the Project.

Community Enhancements

- The Project Parties, the City and the public shall endeavor to reach an agreement on the nature and extent of community enhancement measures needed in and around the Site ("Enhancement Activities") prior to the start of construction of the Facility.
- The Project Parties anticipate the cost for the Enhancement Activities ("Enhancement Cost") will be no more than \$2,000,000.

Property Acquisition

CSXT shall obtain binding commitments or other agreements acceptable to CSXT from the owners of the State Land, City Land, NPO Land, and Private Land sufficient to assure CSXT that it will be able to timely acquire or receive fee simple title, or such other interest, such as by easement or long-term ground lease, in such properties acceptable to CSXT.

Environmental Remediation

- MDOT shall be responsible for remediating environmental contamination on the State Land and the City Land, as necessary, consistent with the intended use of the Site. The State may begin remediation activities on the State Land and the City Land, if necessary, during Phase 2 at the State's option.
- CSXT shall be responsible for remediating environmental contamination on the CSXT Land, Private Land and NPO Land as necessary, consistent with the intended use of the Site and the Project construction schedule. CSXT may begin remediation activities on CSXT Land, if necessary, during Phase 2 at CSXT's option.

Confirmation of Phase 3 Funds

- MDOT shall commit \$30,000,000 in State funds to support construction-related activities for the Facility ("Phase 3 Funds") in the FY2013-2018 Consolidated Transportation Program, to be approved in January 2013. The State will program the funds over a two year period. Each installment of \$15,000,000 will require independent approval through the Maryland General Assembly appropriation process.
- The State will make the first \$15,000,000 installment of the Phase 3 Funds available to CSXT and Intermodal on a reimbursable basis beginning July 1, 2013.
- The remaining \$15,000,000 in State funds will be made available to CSXT and Intermodal on a reimbursable basis beginning July 1, 2014.
- CSXT and Intermodal shall be responsible for all Phase 3 costs above and beyond the State's \$30,000,000.

Other Projects Funds

As part of the Phase 2 activities, MDOT shall use good faith efforts to secure the federal funds in excess of \$15,000,000 for the Other Projects by December 31, 2013. This Phase 2 activity shall be deemed completed if and when the federal funding is either obtained or the State notifies CSXT that, despite the State's good faith efforts, the federal funds for the Other Projects will not be obtained.

Form of Definitive Documentation

During Phase 2, the Project Parties shall endeavor to substantially complete, to the extent practicable, the negotiation of the terms and form of the definitive construction agreement and supporting documentation, as well as the requisite conveyance, or acceptable alternative documents for the State Land, City Land, Private Land and the NPO Land as described in Phase 1 (collectively, the "Definitive Documentation").

Phase 2 Adjusted Cost Projection and Termination Rights

- Upon the later of (i) September 1, 2013, or (ii) the completion of the Phase 2 activities described above (including, but not limited to, obtaining final, non-appealable permits and approvals for the Project, and the determination of all needed community enhancement measures), Intermodal will update and adjust the Initial Cost Projection, as necessary, based on the latest information then available ("Adjusted Cost Projection"). The Adjusted Cost Projection will include, but not be limited to, costs and expenses to be incurred in connection with the Project, such as: Project design, engineering and construction costs; property acquisition, remediating the Project Property; Community Enhancements; activities related to permitting and other approvals; and the cost of the Private Land and other properties, as necessary.

- Within forty-five (45) days of the receipt of the Adjusted Cost Projection, each of the Project Parties shall have the unilateral right by written notice to the other either to terminate this Agreement and cease all activities related to the Project or mutually agree to proceed to Phase 3 (if such written notice is not given within such 45 day period, the Project Parties shall be deemed to have elected to proceed to Phase 3 as of the end of such time period) (the "Proceed Date"). Except for the obligations in existence as of the date of such termination, neither party shall incur any liability if it chooses to exercise its termination right.
- In addition to the termination right set forth in the preceding paragraph, each of the Project Parties shall have the unilateral right by written notice to the other to terminate this Agreement and cease all activities related to the Project if (i) federal funding for Other Projects is not secured by December 31, 2013 or (ii) if the Phase 2 activities are not completed by March 31, 2014. A Project Party shall exercise such termination right, if at all, before the completion of the Phase 2 activities.

PHASE 3
Property Acquisition and Construction
Target Timeline: September 2013 – May 2015

The Project Parties shall, provided they have not timely exercised any of the termination rights set forth in Phase 2, finalize, execute, and deliver the Definitive Documentation within 45 days after the Proceed Date. Each of the Project Parties shall have the right, by written notice to the others, to terminate this Agreement and cease all activities related to the Project if the Definitive Documentation is not finalized and fully executed and delivered within 45 days after the Proceed Date.

The elements described below reflect certain but not all of the terms the Project Parties expect to be part of the Definitive Documentation to be negotiated during Phase 2.

Environmental Remediation

Upon execution and delivery of the Definitive Documentation, the Project Parties shall promptly commence and diligently pursue all environmental remediation at the Site until such remediation is complete.

Notice to Proceed

Intermodal shall issue a notice to proceed to the general contractor for the Project on the later to occur of the following: (a) January 1, 2014, and (b) 30 days after the execution and delivery of the Definitive Documentation.

Phase 3 Property Acquisition

Project Property: All property beyond the CSXT Land that is required in connection with the Project shall be secured through conveyance, easement or long-term ground lease agreements (as described in Phase 1) during Phase 3 and prior to the start of construction.

Equipment

Intermodal shall use modern zero-emissions electric wide span cranes ("Cranes") at the Facility. Intermodal is responsible for ordering the Cranes in a timely manner such that the delivery of the Cranes does not delay the opening and full operation of the Facility.

Minority Business Enterprise

The construction contract shall set goals for Minority Business Enterprise (MBE) participation.

Labor

A project labor agreement (PLA) shall be utilized for construction of the Facility.

Construction of the Facility

- Intermodal shall have responsibility for construction, management and oversight of the contractor.
- Construction shall be completed within twenty-four (24) months of execution and delivery of the Definitive Documentation, subject to extension for delays arising out of force majeure, environmental remediation activities, or MDOT's or the State's failure to timely satisfy their obligations under the Definitive Documentation (the "Construction Period").

Rent Relief

Pursuant to the terms of the existing lease agreement between Intermodal and the State for the use of the Seagirt Intermodal Container Transfer Facility, as amended (the "Lease"), Intermodal's annual rent payment increases on November 4, 2014 ("Lease Payment Increase Date"). If the Project Parties proceed with the Project at the end of Phase 2, and construction at the Facility is not completed by the Lease Payment Increase Date, the amount of rent due from Intermodal pursuant to the Lease shall remain the same as the amount of rent due on the day immediately preceding the Lease Payment Increase Date through October 31, 2015.

Tax Abatement and other Benefits

The State shall assist Intermodal and its affiliates in maximizing tax abatements and credits, Brownfield incentives, and utility discount opportunities that may be available to Intermodal and its affiliates based on the location of the Facility.

Offsite Improvements

CSXT shall finance, design, engineer and construct the eight remaining National Gateway clearance projects located in the State of Maryland listed below (collectively, "Clearance Projects"):

- (1) Catoctin Tunnel – Catoctin, MD (Metropolitan Sub)
- (2) Point of Rocks Tunnel – Point of Rocks, MD (Metropolitan Sub)
- (3) Harpers Ferry Tunnel – Sandy Hook, MD (Cumberland Sub)
- (4) Germantown Pedestrian Bridge – Germantown, MD (Metropolitan Sub)
- (5) Deer Park Drive – Washington Grove, MD (Metropolitan Sub)
- (6) Jessup Road – Jessup, MD (Capital Sub)
- (7) Kenilworth Ave – Hyattsville, MD (Capital Sub)
- (8) Baltimore Washington Parkway Rt 295 – Hyattsville, MD (Capital Sub)

CSXT shall issue a notice to proceed for the construction of one or more of the Clearance Projects by January 1, 2014, and shall endeavor to complete construction of the Clearance Projects prior to the opening of the Facility.

Phase 3 Funds

- Following the execution of the Definitive Documentation, the Phase 3 Funds shall be available to CSXT and Intermodal on a reimbursable basis to offset the costs of the following activities related to the Project (collectively, the "Phase 3 Activities"):
 - Site preparation work, including clearing and grading;
 - Construction of the Facility;
 - Track, signals, utilities, gates, structures and stormwater management facilities located within the footprint of the Site;
 - Energy substations needed to power the Facility;
 - Lead track and switching yards that directly serve the Facility;
 - Equipment to be used within the footprint of the Facility, including the Cranes and stackers;
 - Enhancement Activities (not to exceed the Enhancement Cost); and
 - Other related costs as mutually agreed upon.
- Intermodal shall provide quarterly updates to MDOT on the progress of the construction of the Facility.

Cost Savings

The Project Parties shall pursue all reasonable cost saving measures.

**PHASE 4
Operations
Target Timeline: Beginning May 2015**

The elements described below reflect certain, but not all, terms the Project Parties have agreed upon and expect to be a part of the Definitive Documentation to be negotiated during Phase 2.

Port of Baltimore Service

- When there is enough volume to create a 3,000 foot train on a daily basis, Intermodal shall offer daily single-stack train service between the Facility and the Port of Baltimore's Seagirt Marine Terminal.
- Until such time, Intermodal will offer interim service based on existing demand.

Clean Truck Program

MDOT and Intermodal shall consider the development of a clean truck operating plan. Topics that could be addressed in a plan include the latest policies and technological advances related to clean trucking, and ways in which they can reasonably be incorporated into the operation of the Facility. The plan, if developed, may also address methods by which Intermodal will educate its customers on the most current private, local, state and federal incentive programs available to them to upgrade, retrofit or replace their fleet with newer, cleaner trucks.

Operation of the Facility

Intermodal shall be responsible for all costs and management responsibilities associated with the ongoing maintenance and operations of the Facility.

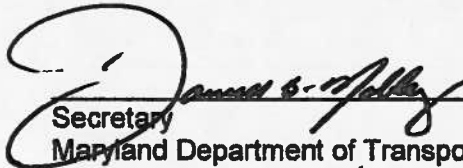
Labor

Non-management employees of Intermodal shall be union labor.

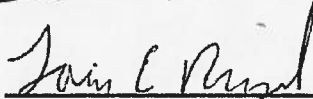
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Execution

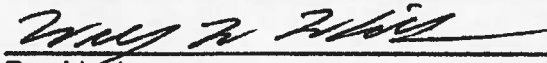
The terms and conditions outlined in this Agreement are effective upon execution by CSXT, Intermodal, and MDOT, on behalf of itself and the State of Maryland. The parties hereto, being duly authorized, have executed this Agreement as of the date set forth below.


Secretary
Maryland Department of Transportation

September 27, 2012


Vice President, Strategic Infrastructure Initiatives
CSX Transportation Inc.

September 12, 2012


President
CSX Intermodal Terminals

September 12, 2012